



ARKANSAS JUDICIARY

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Rule 42. Consolidation; Separate Trials.

(a) *Consolidation.* When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

(b) *Separate Trials.* (1) The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Notwithstanding paragraph (1), all actions tried before a jury in which punitive damages sought shall, on the motion of any party and if warranted by the evidence, be conducted in a bifurcated trial before the same jury. The jury shall first determine the liability of the defendant or defendants for compensatory damages, the amount of compensatory damages to be awarded, and, at the discretion of the circuit court, the liability of the defendant or defendants for punitive damages. Should it be necessary, the jury will then determine in a separate proceeding, the liability of the defendant or defendants for punitive damages, if that issue was not decided previously, and the amount of punitive damages to be awarded. Evidence of a defendant's financial condition shall not be admitted in the first proceeding unless relevant to an issue other than the amount of punitive damages.

Comment Text:

Reporter's Notes to Rule 42: - 1. Rule 42 is substantially the same as FRCP 42. Prior Arkansas law concerning consolidation of cases for trial was found in superseded Ark. Stat. Ann. 27-1304 and 27-1305 (Repl. 1962) and little change is effected by this rule. Generally speaking, consolidation of cases is normally permitted for convenience and economy in judicial administration and not to merge claims into a single cause or change parties' rights. *Johnson v. Manhattan R. Co.*, 289 U.S. 479, 53 S. Ct. 721 (1933). The question of whether to order consolidation rests in the sound discretion of the trial court. *United States v. Knauer*, 149 F. 2d 519 (C.C.A. 7th, 1945), *aff'd*, 328 U.S. 654, 66 S. Ct. 1304.

Addition to Reporter's Notes (2015 amendment): New paragraph (2) has been added to subdivision (b), with its original text designated as paragraph (1). In jury trials, paragraph (2) requires a separate trial, on motion of any party, to determine the amount of punitive damages. The circuit court, in the exercise of its discretion, determines whether liability for

punitive damages is to be decided in the first or second phase of the bifurcated proceeding. With the adoption of this amendment, Ark. Code Ann. § 16-55-211 is superseded pursuant to Ark. Code Ann. § 16-11-301. Section 16-55-211 required bifurcation of the entire punitive-damages claim on motion of a party, as do statutes elsewhere. E.g., Minn. Stat. Ann. § 549.20(4); S.C. Code § 15-32-520. By contrast, other states require a separate trial only as to the amount of punitive damages. E.g., Mo. Stat. Ann. § 510.263(1)-(3); Tenn. Code Ann. § 29-39-104(a). The amendment stakes out a middle ground between these approaches; codifies the pre-2003 practice in Arkansas; and, except as to the amount of punitive damages, leaves the extent of bifurcation to the discretion of the circuit court.

History Text:

Amended February 26, 2015, effective April 1, 2015.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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